

EXHIBIT A

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- TRANSCRIPT UNDER SEAL -

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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H. LUNDBECK, A/S TAKEDA	:	CIVIL ACTION
PHARMACEUTICAL COMPNAY	:	
LTD., TAKEDA	:	
PHARMACEUTICALS U.S.A.,	:	
INC., TAKEDA	:	
PHARMACEUTICALS	:	
INTERNATIONAL AL and TAKEDA	:	
PHARMACEUTICALS AMERICA,	:	
INC.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
ALKEM LABORAROTIES LTD., et	:	
al.,	:	
	:	
Defendant.	:	NO. 18-88 (LPS)

- - -

Wilmington, Delaware
Friday, September 25, 2020
2:00 o'clock, p.m.
***Telephone conference

- - -

BEFORE: HONORABLE JENNIFER L. HALL, U.S. MAGISTRATE JUDGE,

- - -

Valerie J. Gunning
Official Court Reporter

1 **APPEARANCES:**

2
3 **MORRIS, NICHOLS, ARSHT & TUNNELL LLP**
4 **BY: MEGAN E. DELLINGER, ESQ.**

5 **-and-**

6 **COVINGTON & BURLING**
7 **BY: BRIANNE BHARKHDA, ESQ. and**
8 **THOMAS J. SULLIVAN, ESQ.**
9 **(Washington, D.C.)**

10 **Counsel for Plaintiffs**

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12 **BY: DOMINICK T. GATTUSO, ESQ.**

13 **-and-**

14 **BRINKS GILSON & LIONE**
15 **BY: MARK H. REMUS, ESQ.**
16 **LAURA A. LYDIGSEN, ESQ. and**
17 **JASON W. SCHIGELONE, ESQ.**
18 **(Chicago, Illinois)**

19 **Counsel for Defendant**

20 **- - -**

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P R O C E E D I N G S

(The following telephone conference was held beginning at 2:00 p.m.)

THE COURT: Good afternoon, everyone. This is Jennifer Hall. We are here today for a discovery dispute teleconference in Civil Action No. 18-88.

Let's have appearances for the record, starting with plaintiff.

MS. DELLINGER: Good afternoon, Your Honor. This is Megan Dellinger from Morris Nichols on behalf of the plaintiff, and with me on the line is my co-counsel from Covington & Burling, Brianne Bharkhda and Tom Sullivan, and Ms. Bharkhda will be handling the argument on behalf of plaintiff today.

THE COURT: Very good. Good afternoon to all of you.

MR. GATTUSO: Good afternoon, Your Honor. I apologize. Good afternoon, Your Honor. It's Dominick Gattuso from Heyman Enerio.

I have with me on the line Mark Remus, Laura Lydigsen and Jason Schigelone from the Brinks Gilson & Lione

1 firm.

2 I also have with me on the line, Your Honor,
3 Maggie Spencer, who is in-house counsel with Sandoz.

4 Mr. Remus is going to argue on behalf of Sandoz
5 today, Your Honor.

6 THE COURT: Of course. Good afternoon to all of
7 you.

8 I understand that this dispute is between
9 plaintiff and Sandoz. Is there anyone else on the line that
10 wishes to make an appearance for the record?

11 Okay. Hearing no response, I will also say for
12 the record today that our court reporter is Val Gunning. We
13 are still in the midst of the Covid 19 pandemic. I'm at the
14 courthouse. My courtroom deputy and clerk are also dialed
15 in on separate lines. We are not currently with the court
16 reporter, but she has dialed in as well.

17 Okay. Let's have the movant begin. I was
18 hoping we could limit our comments to around five minutes if
19 that works. This seems to be a pretty straightforward
20 dispute, and I will let everyone know that I've already
21 reviewed the letters in detail as well as the attachments
22 and the relevant portions of the docket. So go ahead.

23 MS. BHARKHDA: Your Honor, this is Brianne
24 Bharkhda for plaintiff, and I'm happy to answer any specific
25 questions Your Honor may have since you have reviewed the

1 letters and the briefing. If there's anything in particular
2 you would like me to answer, I'm happy to do so.

3 We have a dispute here relating to two dependent
4 claims of the '096 patent, claims 4 and 5. We indicated to
5 Sandoz in July after some other patents dropped out of the
6 case that we were no longer planning on asserting claims 4
7 and 5 of the '096 patent and therefore we do not think
8 expert discovery relating to those patents would not
9 necessary. Even though Sandoz had on a number of occasions
10 told plaintiff and the Court that they didn't believe any of
11 the claims of the '096 patent were properly in the case,
12 Sandoz took the position that it was not sufficient for
13 plaintiffs to indicate that it was no longer asserting those
14 claims, that in order to remove the dispute and the expert
15 discovery, we needed to do something more. They
16 specifically suggested [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Now, Dr. -- the parties in this case, this is a
24 large Hatch-Waxman matter, are in the middle of expert
25 discovery, expert deposition for various experts in the

1 case. Dr. Gozzo submitted an expert report that related
2 only to claims 4 and 5 of the '096 patent with respect to
3 the claims that remain in the, arguably in the case as of
4 today. Her report also related to the crystalline form
5 patents that had been in the case, but those had been
6 dismissed by Judge Stark. Dr. Myerson is similarly
7 situated. The opinions that he provided with respect to
8 Sandoz relate to claim 4 and 5 of the '096 patent.

9 In light of [REDACTED], we don't
10 think that there is a proper dispute anymore. We have
11 indicated that we don't plan to call Dr. Gozzo or Dr.
12 Myerson at trial, but Sandoz has indicated that it wants to
13 pursue the deposition of Dr. Myerson and Dr. Gozzo
14 nonetheless, and we filed a protective order in this case as
15 a result.

16 Now, the reason that Sandoz gave --

17 THE COURT: Counsel, counsel, if I could
18 interrupt you for just a minute.

19 MS. BHARKHDA: Yes.

20 THE COURT: So are you telling me that -- so
21 Sandoz's claim for a D.J. of noninfringement is still
22 pending. Is that right?

23 MS. BHARKHDA: There have been -- we have not
24 filed a motion to dismiss at this point. Frankly, just to
25 be clear, the D.J. action is for -- the D.J. claim relates

1 broadly to just as the claims of the '096 patent. It's not
2 specifically for claims 4 and 5.

3 We have not filed a motion to dismiss those.
4 Our understanding now from Sandoz's letter is that that is
5 what it thinks is necessary to formally resolve of this
6 dispute. We can do so. We don't think that should be
7 necessary because I think given [REDACTED], the
8 parties should be stipulating to dismissal without prejudice
9 of those portions of the pending claims that relate to
10 claims 4 and 5, but if Sandoz will not stipulate to that,
11 then we can file a formal motion to dismiss. But as of
12 today, those claims are still in the case. Regardless, we
13 think given [REDACTED] even while such a motion
14 were pending, if Sandoz indicates that it will require us to
15 file such a motion, the protective order is still
16 appropriate because we don't see how their goal, how those
17 claims are going to remain in the case at the end of such a
18 motion.

19 So this issue about whether or not a motion to
20 dismiss has been filed seems like form over substance to us
21 because I don't see a real argument that claims 4 and 5 are
22 actually still in the case.

23 THE COURT: Well, and I appreciate your argument
24 about it seeming like form over substance, but the issues
25 that I'm dealing with is that I am not the Judge who is

1 going to be deciding whether or not those claims are in the
2 case, and it seems to me that my decision is not being made
3 in a vacuum.

4 I can look at the docket and see that there was
5 some discussion about dismissing claims or counterclaims
6 relating to the '096 patent, and that Judge Stark said
7 nothing is going to happen at this time, and if you want to
8 file a motion to dismiss, you could file a motion to
9 dismiss, and that didn't happen. So I don't know the
10 backstory. I'm assuming it doesn't really matter because
11 I'm not the one that would be deciding that motion anyway,
12 but today as it stands before me, I've got these, the D.J.
13 counterclaims pending.

14 I've heard you say you weren't going to offer
15 the testimony of Dr. Gozzo and Myerson against Sandoz at
16 trial and I want to make sure I understand what you are
17 saying.

18 If we move to trial and Sandoz moves forward
19 requesting a D.J. of noninfringement, are you saying that in
20 response, you're not going to offer the testimony of Dr.
21 Gozzo and Myerson?

22 MS. BHARKHDA: Well, Your Honor, if there -- if
23 by some -- if there is some decision by the Court that the
24 claims are still in the case, we would have to offer that
25 testimony at trial, but we don't think there's an actual

1 dispute here, and we -- I don't think -- the Judge said that
2 the parties may file motions to dismiss. Sandoz has argued
3 to us that it shouldn't be necessary for the parties to do
4 that. We should be agreeing to dismiss all. In fact, they
5 said that to the Court when responding, when filing their
6 motion to dismiss regarding the '910 patents. They didn't
7 give us advance notice of their motion to dismiss and then
8 we decided not to oppose it, so we just filed the response
9 not opposing it.

10 In response to that, Sandoz told the Court that
11 they believed that they should not have had to go to the
12 burden and expense of filing the motion to dismiss at all.
13 We should have just agreed to dismiss the claims, and we
14 think that that is what should be done here. We have given
15 Sandoz advance notice of the fact that we think these claims
16 should be out of the case. If by some measure the Court
17 were to find that there's subject matter jurisdiction here
18 supporting Sandoz's claims, then we would, we would have to
19 put on Dr. Myerson and Gozzo at trial. We don't think
20 that's the case, and the only basis that Sandoz has given
21 for why the claims should still be in the case to us is that
22 they don't believe that [REDACTED] is
23 sufficient.

24 Now, we were expecting in Sandoz's responsive
25 letter brief to Your Honor consistent with what they put in

1 their discovery dispute letter that they were going to
2 explain the basis, the legal basis for their contentions
3 that [REDACTED] didn't
4 extinguish the case or controversy. So that's their basis
5 for saying they would need to go forward, would be a
6 deposition. At least that was articulated to us prior to
7 receipt of their responsive letter.

8 And they did not do so, which I think reinforces
9 our point that we think it is legally sufficient and there's
10 no basis for (inaudible) the claims in the case. But if the
11 real concern is that there's no actual motion to dismiss on
12 file, we'll file one immediately, but we don't think that
13 should be necessary and Sandoz we don't think has a legal
14 position to oppose it.

15 So there still isn't a basis to go forward with
16 these depositions in the meantime if the likely outcome of a
17 motion to dismiss even if Sandoz isn't going to oppose it or
18 that we will prevail with Judge Stark.

19 THE COURT: All right. One question I had about
20 that is, we're in September, we're in late September, and so
21 this is two months after I see a docket entry saying that if
22 anyone wants to file any motions to dismiss, they should
23 file it. So I'm trying to understand how what happened in
24 the meantime in terms of why is there so much delay in the
25 motion to dismiss.

1 MS. BHARKHDA: Sure. I'm happy to explain the
2 timeline.

3 So on July 7th, Sandoz told plaintiffs that they
4 believed that the claims relating to the '096 patent should
5 be dismissed without prejudice. On July 8th, Sandoz told
6 the Court the same thing. They -- and that was in docket
7 entry 39.

8 Plaintiffs' counsel was considering that
9 position, and on July 22nd, we informed Sandoz that and
10 Judge Stark that we were no longer asserting claims 4 and 5
11 of the '096 patent against Sandoz. We made that very clear
12 in July, as soon as plaintiff, our clients were onboard that
13 we were no longer pursuing those claims. And we thought
14 that frankly would resolve the issue because Sandoz had
15 repeatedly been on record with both plaintiff and the Court
16 indicating that they didn't believe there was subject matter
17 jurisdiction over any of the claims of the '096 patent. But
18 on that same date, Sandoz made an about face and stated that
19 they would, that they didn't agree that claims 4 and 5 of
20 the '096 patent were out of the case, and instead Sandoz
21 demanded [REDACTED] and indicated
22 that they would insist on deposing Dr. Myerson and Dr. Gozzo
23 unless [REDACTED]

24 Now, that was -- and that happened on July 28th.

25 [REDACTED]

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[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

the claims are no longer in the case, and Drs. Myerson and Gozzo didn't need to be deposed.

And in their previous position, Sandoz indicated they did not agree to that, that they didn't think [REDACTED] [REDACTED] was sufficient, and they were going to proceed with the depositions of Dr. Myerson sand Dr. Gozzo, hence our filing of the, of our motion for a protective order.

And the first tame that we -- and we are clear that we think Sandoz should be stipulating to dismissal without prejudice of the claims because we don't think they're in the case, and this is the -- the first time that we heard Sandoz's argument that the real problem here is that we have not filed a formal motion to dismiss within the letter briefs to the Court on this Tuesday.

So we can file a formal motion to dismiss to resolve the dispute, but all of the facts are going to be

1 the same and there's no cause for deposing these witnesses
2 at this point in time.

3 THE COURT: All right. I gave you some extra
4 time and I will give the other side some equal time, but I
5 have one more question. Assuming that I do permit the
6 deposition of Dr. Gozzo and Myerson to go forward, there's
7 this other issue about whether or not you're barred from
8 conferring with Dr. Gozzo in preparation of her deposition.

9 Can you just tell me what has happened with Dr.
10 Gozzo so far? Was there a portion of her deposition that
11 was joint and then portions that were specific to individual
12 defendants or have all of the depositions of Dr. Gozzo been
13 individual issue depositions?

14 MS. BHARKHDA: There were two prior individual
15 issue depositions of Dr. Gozzo. There was no joint
16 questioning and no joint deposition. There was a deposition
17 by MSN and a deposition by Torrent, and they were separate
18 self-contained depositions.

19 If Your Honor would like to see, for example,
20 the transcript of those indicating that they -- showing that
21 they went only lawyers for MSN were at the MSN deposition.
22 They went on the record and began as the normal deposition
23 and they closed the deposition at the end. The Torrent
24 deposition was only attended by Torrent's lawyers, and
25 obviously, lawyers for plaintiffs were on both. They opened

1 the deposition as a separate deposition and closed it as a
2 separate deposition.

3 So I'm happy to provide. And there were only
4 questions about -- they pertained to the individual
5 infringement issues for MSN and Torrent each respectively.
6 And if Your Honor would like to see the transcript of those,
7 we're happy to provide them.

8 THE COURT: No, I don't, I don't need to see it.
9 But just to be clear, those were also marked confidential
10 under the protective order as well?

11 MS. BHARKHDA: Yes.

12 THE COURT: Okay. Very good.

13 All right. Let me hear from Sandoz regarding
14 the issues in dispute. Go ahead, counsel.

15 MR. REMUS: Thank you, Your Honor. This is Mark
16 Remus. I will be speaking on behalf of Sandoz and Lex.

17 This is not a matter of form over substance. I
18 think it's very important to resolving this issue to keep
19 our eyes focused on what specifically the Court has been
20 asked to decide, and that is should plaintiff get a
21 protective order preventing further discovery of their
22 experts by Sandoz? What is not before the Court is whether
23 or not there's a case or controversy or continuing subject
24 matter jurisdiction.

25 Plaintiffs have not filed that motion. Judge

1 Stark told them that if they wanted to challenge
2 jurisdiction, they need to file a motion and they have not
3 done that. So the only issue that we're here to discuss
4 today is whether or not their application for protective
5 order is proper and Sandoz strongly believes it is not
6 proper.

7 Plaintiffs' request is contrary to both the
8 letter and the spirit of local Rule 30.2. Local Rule 30.2
9 allows somebody to challenge further deposition testimony to
10 get a protective order under Rule 26 or Rule. Protective
11 orders for those rules are granted to prevent annoyance,
12 embarrassment, oppression. None of that is present here.

13 The only basis for plaintiffs' request is that
14 they think there's no longer subject matter jurisdiction.
15 The only challenge for that is to file a Rule 12 motion, and
16 Rule 12 is not mentioned anywhere in local Rule 30.2 as a
17 basis for terminating a deposition.

18 Plaintiff took it upon themselves for self-help
19 to give themselves a stay of discovery and filed its motion
20 for a protective order on an improper basis knowing full
21 well that Judge Stark told them if they want to get rid of
22 the claim, they have to file a motion to dismiss.

23 Now, all of this gamesmanship by plaintiffs has
24 worked a great prejudice on Sandoz. Sandoz coordinated with
25 MSN and Torrent in an extent to streamline the deposition of

1 Dr. Gozzo.

2 Plaintiff sat on this issue for many weeks as
3 you just heard and then ripped the rug out underneath from
4 defendants just days before the Gozzo deposition, which
5 frustrated preparation for all parties on the Gozzo
6 deposition, and now plaintiffs seek to exacerbate that
7 prejudice by asking this Court to forego local Rule 30.6 and
8 allow them to speak to Dr. Gozzo before Sandoz takes Dr.
9 Gozzo's deposition. And that is wholly improper.

10 Local Rule 30.6 is designed for exactly where --
11 the situation where counsel should not be allowed to talk to
12 their witness about the substance of their testimony based
13 on questions that have already been asked. This notion that
14 each defendant constitutes a separate deposition is a legal
15 fiction that was created by Covington in these letters and
16 has no basis in all of the history of this case up until
17 this particular dispute, and we cited that in our letter
18 brief where both Judge Stark and plaintiffs themselves
19 referred to a deposition of Dr. Myerson and Dr. Gozzo in the
20 singular, and this case has been consolidated for all
21 purposes.

22 So this deposition of Dr. Gozzo is a single
23 deposition and plaintiffs should not be allowed to review
24 that transcript from the MSN and Torrent depositions and
25 then coach Dr. Gozzo what to say for the Sandoz depositions

1 based on what they've already learned.

2 This is no different than if Dr. Gozzo were
3 testifying on the stand at trial. If MSN and Torrent finish
4 their questioning of Dr. Gozzo, I would be shocked if Judge
5 Stark allowed plaintiffs to then talk to Dr. Gozzo about the
6 substance of her testimony before Sandoz questioned Dr.
7 Gozzo. The same should apply to the depositions here.

8 As Your Honor noted, we don't have much time.
9 Trial is set for January of 2021. We need to schedule these
10 depositions of Dr. Gozzo and Dr. Myerson so that we can be
11 trial ready by the time set by Judge Stark.

12 There is no basis for a protective order here.
13 If plaintiffs want to challenge subject matter jurisdiction,
14 Judge stark told them how to do that, and that is filing a
15 Rule 12 motion.

16 THE COURT: Counsel, let me ask you. The way I
17 understood how Dr. Gozzo's deposition or depositions have
18 been proceeding is that they've been completely separate
19 among defendants. You're suggesting something different.
20 Can you straighten me out here?

21 MR. REMUS: I can't speak to how the MSN and
22 Torrent depositions specifically were handled because we
23 were not present at that deposition, so we can't say what
24 was or was not on the transcript. What I can say is that
25 every discussion the parties have had about these

1 depositions refer to the depositions in the singular, a
2 deposition of Dr. Myerson, and just because one defendant
3 finishes their questioning and another begins does not mean
4 that a new deposition has begun.

5 THE COURT: Okay. I understand your position.
6 Anything else you wanted to add?

7 MR. REMUS: No. Thank you, Your Honor.

8 THE COURT: All right. We'll turn it back over
9 to the plaintiff for the last word. Just a minute, please.
10 Go ahead.

11 MS. BHARKHDA: Your Honor, I did want to address
12 the issue of the legal standard for a protective order for
13 absent burden, annoyance, and there is a reason here
14 particularly why going forward with depositions that are not
15 actually going to be at issue in the case totally meets that
16 standard.

17 First of all, Dr. Myerson is scheduled to sit
18 for more than 40 hours of depositions in this case, and so
19 to ask him if Sandoz, if Sandoz matters are not really
20 particularly in this case, to sit for more time is a burden
21 both to the witness and to plaintiffs.

22 Dr. Gozzo, similarly. We would have to take
23 additional time out of the deposition she has already given
24 to do so. And as a general matter, there are 29 different
25 experts in this case. There are at least two to three

1 depositions that happen in a week. Some of these are
2 multi-day accept depositions in this case, so there is a lot
3 happening to add on two depositions here where the actual
4 issues are not in dispute.

5 And the other issue is that right now Dr.
6 Myerson is scheduled to be deposed, I believe it's the
7 second week of November, and so even if plaintiff filed
8 their motion and (inaudible) and was going to dismiss, I
9 think issue is, the question of whether or not it's
10 appropriate for Sandoz to participate in that deposition is
11 still going to be an issue and we don't think it's
12 appropriate or proper.

13 So it's not just a matter of file a motion to
14 dismiss and wait to see what Dr., excuse me, what Judge
15 Stark does with it. I mean, one question is, if we file a
16 motion to dismiss, is Sandoz going to oppose it, because
17 right now we don't have a clear answer on that one way or
18 the other or what the basis for doing so would be, and
19 absent that, this bogeyman of the fact that a formal motion
20 to dismiss hasn't been filed yet I don't think resolves the
21 issue.

22 THE COURT: All right. I appreciate your
23 position and I understand your position. Counsel, I'm ready
24 to rule on this dispute and my ruling is as follows.

25 Plaintiffs' request for a protective order to

1 prevent Sandoz from deposing Dr. Gozzo and Myerson is
2 denied. The Court can issue a protective order for good
3 cause to protect a person or party from annoyance,
4 embarrassment, oppression, or undue burden or excess. The
5 burden of persuasion is on the party seeking the protective
6 order.

7 Here, plaintiff contends that good cause exists
8 because the deposition testimony is not relevant. I have
9 reviewed the letters and attachments. I've reviewed the
10 cited portions of the docket. I have an understanding of
11 what's likely going on here and I'm fully aware that this
12 motion before me is only a little piece of a much larger
13 dispute, but I've only been referred this piece and I'm only
14 going to decide this piece. And in my mind, the operative
15 facts to me in deciding my piece are these.

16 One, Sandoz has a live counterclaim for a
17 declaratory judgment of noninfringement. Not only is it
18 live, it is not currently subject to a motion to dismiss.

19 Two, plaintiff intends to offer the testimony of
20 Dr. Gozzo and Myerson in defense of that counterclaim it has
21 tried.

22 My decision is also informed by the context
23 here, which is that we're talking about a video deposition
24 regarding infringement opinions that have already been set
25 forth in expert reports. The only question is whether

1 Sandoz can depose these experts on those opinions. On those
2 facts, plaintiffs' request is denied.

3 There is also an issue about plaintiffs, whether
4 plaintiffs are currently barred under Delaware local Rule
5 30.6 from conferring with Dr. Gozzo in preparation of her
6 deposition. Essentially, as I understand it, Sandoz seeks
7 to prevent plaintiff from prepping Dr. Gozzo for her
8 deposition.

9 Under the particular circumstances here, I'm
10 unpersuaded by Sandoz's argument. Again, I've read the
11 submissions and I've looked at the relevant portions of the
12 docket and we're not operating in a vacuum here. Chief
13 Judge Stark has already ruled on what depositions can be
14 taken of Dr. Gozzo. I understand that Dr. Gozzo's
15 deposition taken by the other two defendants have been
16 completely separate. There is no common portion of that
17 deposition. However, notwithstanding the fact that
18 plaintiff can prep Dr. Gozzo, Sandoz will be permitted to
19 conduct a short colloquy at the beginning of the deposition.

20 You can ask if plaintiff consulted with Dr.
21 Gozzo prior to the deposition. If that answer is yes, you
22 can ask whether Dr. Gozzo consulted with counsel for
23 plaintiff regarding testimony she has already given. You
24 can't ask what was said. And you can ask about which areas
25 of the testimony already given was the consultation. You

1 can't ask what was said. And you can make a record that
2 this happened.

3 If, for whatever reason, Dr. Gozzo presents
4 diametrically opposed testimony, then you can try to make
5 some hay with Judge Stark at trial, because I understand
6 this is going to be a bench trial. But I actually think
7 this is extremely unlikely to happen in light of the fact
8 that it seems to me this case, or these particular claims
9 won't be tried, number one, and, number two, I think it's
10 unlikely that the plaintiff would present diametrically
11 opposed testimony, but that's not for me to say. You can
12 make this record. I hope that was clear to everyone.

13 Counsel for plaintiff, any questions?

14 MS. BHARKHDA: I don't believe so, Your Honor.

15 THE COURT: Okay. Counsel for Sandoz, any
16 questions?

17 MR. REMUS: No questions, but one request, and
18 that is we would ask that at least temporarily that the
19 court reporter maintain this transcript under seal so that
20 we have an opportunity to review it to see if there's
21 anything confidential. [REDACTED]
22 [REDACTED]
23 [REDACTED], and we would just
24 like the opportunity to review that transcript before it
25 becomes public.

1 THE COURT: That's fine. I understand that
2 we're proceeding under the scheduling order that Judge Stark
3 has entered in this case, and my recollection is that he has
4 a standard provision about how these things should be
5 treated, and if that's the appropriate procedure, then we'll
6 let the transcript be marked confidential and you should
7 proceed in accordance with what other followup procedures
8 are set forth in the scheduling order.

9 Anything else, counsel?

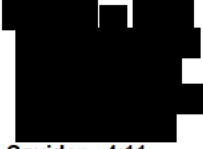
10 MR. REMUS: No. Thank you, Your Honor.

11 THE COURT: All right. Thank you to all of you.
12 I hope everyone is safe and well, and we'll be adjourned.

13 (Counsel respond, "Thank you, Your Honor.")

14 (Telephone conference concluded at 2:31 p.m.)

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EXHIBIT B

- TRANSCRIPT UNDER SEAL -

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

H. LUNDBECK, A/S TAKEDA : CIVIL ACTION
PHARMACEUTICAL COMPNAY :
LTD., TAKEDA :
PHARMACEUTICALS U.S.A., :
INC., TAKEDA :
PHARMACEUTICALS :
INTERNATIONAL AL and TAKEDA :
PHARMACEUTICALS AMERICA, :
INC., :
Plaintiffs, :
vs. :
ALKEM LABORAROTIES LTD., et :
al., :
Defendant. : NO. 18-88 (LPS)

- - -

Wilmington, Delaware
Friday, September 25, 2020
2:00 o'clock, p.m.
***Telephone conference

- - -

BEFORE: HONORABLE JENNIFER L. HALL, U.S. MAGISTRATE JUDGE,

- - -

Valerie J. Gunning
Official Court Reporter

1 **APPEARANCES:**

2
3 **MORRIS, NICHOLS, ARSHT & TUNNELL LLP**
4 **BY: MEGAN E. DELLINGER, ESQ.**

5 **-and-**

6 **COVINGTON & BURLING**
7 **BY: BRIANNE BHARKHDA, ESQ. and**
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P R O C E E D I N G S

(The following telephone conference was held beginning at 2:00 p.m.)

THE COURT: Good afternoon, everyone. This is Jennifer Hall. We are here today for a discovery dispute teleconference in Civil Action No. 18-88.

Let's have appearances for the record, starting with plaintiff.

MS. DELLINGER: Good afternoon, Your Honor. This is Megan Dellinger from Morris Nichols on behalf of the plaintiff, and with me on the line is my co-counsel from Covington & Burling, Brianne Bharkhda and Tom Sullivan, and Ms. Bharkhda will be handling the argument on behalf of plaintiff today.

THE COURT: Very good. Good afternoon to all of you.

MR. GATTUSO: Good afternoon, Your Honor. I apologize. Good afternoon, Your Honor. It's Dominick Gattuso from Heyman Enerio.

I have with me on the line Mark Remus, Laura Lydigsen and Jason Schigelone from the Brinks Gilson & Lion

1 firm.

2 I also have with me on the line, Your Honor,
3 Maggie Spencer, who is in-house counsel with Sandoz.

4 Mr. Remus is going to argue on behalf of Sandoz
5 today, Your Honor.

6 THE COURT: Of course. Good afternoon to all of
7 you.

8 I understand that this dispute is between
9 plaintiff and Sandoz. Is there anyone else on the line that
10 wishes to make an appearance for the record?

11 Okay. Hearing no response, I will also say for
12 the record today that our court reporter is Val Gunning. We
13 are still in the midst of the Covid 19 pandemic. I'm at the
14 courthouse. My courtroom deputy and clerk are also dialed
15 in on separate lines. We are not currently with the court
16 reporter, but she has dialed in as well.

17 Okay. Let's have the movant begin. I was
18 hoping we could limit our comments to around five minutes if
19 that works. This seems to be a pretty straightforward
20 dispute, and I will let everyone know that I've already
21 reviewed the letters in detail as well as the attachments
22 and the relevant portions of the docket. So go ahead.

23 MS. BHARKHDA: Your Honor, this is Brianne
24 Bharkhda for plaintiff, and I'm happy to answer any specific
25 questions Your Honor may have since you have reviewed the

1 letters and the briefing. If there's anything in particular
2 you would like me to answer, I'm happy to do so.

3 We have a dispute here relating to two dependent
4 claims of the '096 patent, claims 4 and 5. We indicated to
5 Sandoz in July after some other patents dropped out of the
6 case that we were no longer planning on asserting claims 4
7 and 5 of the '096 patent and therefore we do not think
8 expert discovery relating to those patents would not
9 necessary. Even though Sandoz had on a number of occasions
10 told plaintiff and the Court that they didn't believe any of
11 the claims of the '096 patent were properly in the case,
12 Sandoz took the position that it was not sufficient for
13 plaintiffs to indicate that it was no longer asserting those
14 claims, that in order to remove the dispute and the expert
15 discovery, we needed to do something more. They
16 specifically suggested [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Now, Dr. -- the parties in this case, this is a
24 large Hatch-Waxman matter, are in the middle of expert
25 discovery, expert deposition for various experts in the

1 case. Dr. Gozzo submitted an expert report that related
2 only to claims 4 and 5 of the '096 patent with respect to
3 the claims that remain in the, arguably in the case as of
4 today. Her report also related to the crystalline form
5 patents that had been in the case, but those had been
6 dismissed by Judge Stark. Dr. Myerson is similarly
7 situated. The opinions that he provided with respect to
8 Sandoz relate to claim 4 and 5 of the '096 patent.

9 In light of [REDACTED], we don't
10 think that there is a proper dispute anymore. We have
11 indicated that we don't plan to call Dr. Gozzo or Dr.
12 Myerson at trial, but Sandoz has indicated that it wants to
13 pursue the deposition of Dr. Myerson and Dr. Gozzo
14 nonetheless, and we filed a protective order in this case as
15 a result.

16 Now, the reason that Sandoz gave --

17 THE COURT: Counsel, counsel, if I could
18 interrupt you for just a minute.

19 MS. BHARKHDA: Yes.

20 THE COURT: So are you telling me that -- so
21 Sandoz's claim for a D.J. of noninfringement is still
22 pending. Is that right?

23 MS. BHARKHDA: There have been -- we have not
24 filed a motion to dismiss at this point. Frankly, just to
25 be clear, the D.J. action is for -- the D.J. claim relates

1 broadly to just as the claims of the '096 patent. It's not
2 specifically for claims 4 and 5.

3 We have not filed a motion to dismiss those.
4 Our understanding now from Sandoz's letter is that that is
5 what it thinks is necessary to formally resolve of this
6 dispute. We can do so. We don't think that should be
7 necessary because I think given [REDACTED], the
8 parties should be stipulating to dismissal without prejudice
9 of those portions of the pending claims that relate to
10 claims 4 and 5, but if Sandoz will not stipulate to that,
11 then we can file a formal motion to dismiss. But as of
12 today, those claims are still in the case. Regardless, we
13 think given [REDACTED] even while such a motion
14 were pending, if Sandoz indicates that it will require us to
15 file such a motion, the protective order is still
16 appropriate because we don't see how their goal, how those
17 claims are going to remain in the case at the end of such a
18 motion.

19 So this issue about whether or not a motion to
20 dismiss has been filed seems like form over substance to us
21 because I don't see a real argument that claims 4 and 5 are
22 actually still in the case.

23 THE COURT: Well, and I appreciate your argument
24 about it seeming like form over substance, but the issues
25 that I'm dealing with is that I am not the Judge who is

1 going to be deciding whether or not those claims are in the
2 case, and it seems to me that my decision is not being made
3 in a vacuum.

4 I can look at the docket and see that there was
5 some discussion about dismissing claims or counterclaims
6 relating to the '096 patent, and that Judge Stark said
7 nothing is going to happen at this time, and if you want to
8 file a motion to dismiss, you could file a motion to
9 dismiss, and that didn't happen. So I don't know the
10 backstory. I'm assuming it doesn't really matter because
11 I'm not the one that would be deciding that motion anyway,
12 but today as it stands before me, I've got these, the D.J.
13 counterclaims pending.

14 I've heard you say you weren't going to offer
15 the testimony of Dr. Gozzo and Myerson against Sandoz at
16 trial and I want to make sure I understand what you are
17 saying.

18 If we move to trial and Sandoz moves forward
19 requesting a D.J. of noninfringement, are you saying that in
20 response, you're not going to offer the testimony of Dr.
21 Gozzo and Myerson?

22 MS. BHARKHDA: Well, Your Honor, if there -- if
23 by some -- if there is some decision by the Court that the
24 claims are still in the case, we would have to offer that
25 testimony at trial, but we don't think there's an actual

1 dispute here, and we -- I don't think -- the Judge said that
2 the parties may file motions to dismiss. Sandoz has argued
3 to us that it shouldn't be necessary for the parties to do
4 that. We should be agreeing to dismiss all. In fact, they
5 said that to the Court when responding, when filing their
6 motion to dismiss regarding the '910 patents. They didn't
7 give us advance notice of their motion to dismiss and then
8 we decided not to oppose it, so we just filed the response
9 not opposing it.

10 In response to that, Sandoz told the Court that
11 they believed that they should not have had to go to the
12 burden and expense of filing the motion to dismiss at all.
13 We should have just agreed to dismiss the claims, and we
14 think that that is what should be done here. We have given
15 Sandoz advance notice of the fact that we think these claims
16 should be out of the case. If by some measure the Court
17 were to find that there's subject matter jurisdiction here
18 supporting Sandoz's claims, then we would, we would have to
19 put on Dr. Myerson and Gozzo at trial. We don't think
20 that's the case, and the only basis that Sandoz has given
21 for why the claims should still be in the case to us is that
22 they don't believe that [REDACTED] is
23 sufficient.

24 Now, we were expecting in Sandoz's responsive
25 letter brief to Your Honor consistent with what they put in

1 their discovery dispute letter that they were going to
2 explain the basis, the legal basis for their contentions
3 that [REDACTED] didn't
4 extinguish the case or controversy. So that's their basis
5 for saying they would need to go forward, would be a
6 deposition. At least that was articulated to us prior to
7 receipt of their responsive letter.

8 And they did not do so, which I think reinforces
9 our point that we think it is legally sufficient and there's
10 no basis for (inaudible) the claims in the case. But if the
11 real concern is that there's no actual motion to dismiss on
12 file, we'll file one immediately, but we don't think that
13 should be necessary and Sandoz we don't think has a legal
14 position to oppose it.

15 So there still isn't a basis to go forward with
16 these depositions in the meantime if the likely outcome of a
17 motion to dismiss even if Sandoz isn't going to oppose it or
18 that we will prevail with Judge Stark.

19 THE COURT: All right. One question I had about
20 that is, we're in September, we're in late September, and so
21 this is two months after I see a docket entry saying that if
22 anyone wants to file any motions to dismiss, they should
23 file it. So I'm trying to understand how what happened in
24 the meantime in terms of why is there so much delay in the
25 motion to dismiss.

1 MS. BHARKHDA: Sure. I'm happy to explain the
2 timeline.

3 So on July 7th, Sandoz told plaintiffs that they
4 believed that the claims relating to the '096 patent should
5 be dismissed without prejudice. On July 8th, Sandoz told
6 the Court the same thing. They -- and that was in docket
7 entry 39.

8 Plaintiffs' counsel was considering that
9 position, and on July 22nd, we informed Sandoz that and
10 Judge Stark that we were no longer asserting claims 4 and 5
11 of the '096 patent against Sandoz. We made that very clear
12 in July, as soon as plaintiff, our clients were onboard that
13 we were no longer pursuing those claims. And we thought
14 that frankly would resolve the issue because Sandoz had
15 repeatedly been on record with both plaintiff and the Court
16 indicating that they didn't believe there was subject matter
17 jurisdiction over any of the claims of the '096 patent. But
18 on that same date, Sandoz made an about face and stated that
19 they would, that they didn't agree that claims 4 and 5 of
20 the '096 patent were out of the case, and instead Sandoz
21 demanded [REDACTED] and indicated
22 that they would insist on deposing Dr. Myerson and Dr. Gozzo
23 unless [REDACTED]

24 Now, that was -- and that happened on July 28th.

25 [REDACTED]

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the claims are no longer in the case, and Drs. Myerson and Gozzo didn't need to be deposed.

And in their previous position, Sandoz indicated they did not agree to that, that they didn't think [REDACTED] [REDACTED] was sufficient, and they were going to proceed with the depositions of Dr. Myerson sand Dr. Gozzo, hence our filing of the, of our motion for a protective order.

And the first tame that we -- and we are clear that we think Sandoz should be stipulating to dismissal without prejudice of the claims because we don't think they're in the case, and this is the -- the first time that we heard Sandoz's argument that the real problem here is that we have not filed a formal motion to dismiss within the letter briefs to the Court on this Tuesday.

So we can file a formal motion to dismiss to resolve the dispute, but all of the facts are going to be

1 the same and there's no cause for deposing these witnesses
2 at this point in time.

3 THE COURT: All right. I gave you some extra
4 time and I will give the other side some equal time, but I
5 have one more question. Assuming that I do permit the
6 deposition of Dr. Gozzo and Myerson to go forward, there's
7 this other issue about whether or not you're barred from
8 conferring with Dr. Gozzo in preparation of her deposition.

9 Can you just tell me what has happened with Dr.
10 Gozzo so far? Was there a portion of her deposition that
11 was joint and then portions that were specific to individual
12 defendants or have all of the depositions of Dr. Gozzo been
13 individual issue depositions?

14 MS. BHARKHDA: There were two prior individual
15 issue depositions of Dr. Gozzo. There was no joint
16 questioning and no joint deposition. There was a deposition
17 by MSN and a deposition by Torrent, and they were separate
18 self-contained depositions.

19 If Your Honor would like to see, for example,
20 the transcript of those indicating that they -- showing that
21 they went only lawyers for MSN were at the MSN deposition.
22 They went on the record and began as the normal deposition
23 and they closed the deposition at the end. The Torrent
24 deposition was only attended by Torrent's lawyers, and
25 obviously, lawyers for plaintiffs were on both. They opened

1 the deposition as a separate deposition and closed it as a
2 separate deposition.

3 So I'm happy to provide. And there were only
4 questions about -- they pertained to the individual
5 infringement issues for MSN and Torrent each respectively.
6 And if Your Honor would like to see the transcript of those,
7 we're happy to provide them.

8 THE COURT: No, I don't, I don't need to see it.
9 But just to be clear, those were also marked confidential
10 under the protective order as well?

11 MS. BHARKHDA: Yes.

12 THE COURT: Okay. Very good.

13 All right. Let me hear from Sandoz regarding
14 the issues in dispute. Go ahead, counsel.

15 MR. REMUS: Thank you, Your Honor. This is Mark
16 Remus. I will be speaking on behalf of Sandoz and Lex.

17 This is not a matter of form over substance. I
18 think it's very important to resolving this issue to keep
19 our eyes focused on what specifically the Court has been
20 asked to decide, and that is should plaintiff get a
21 protective order preventing further discovery of their
22 experts by Sandoz? What is not before the Court is whether
23 or not there's a case or controversy or continuing subject
24 matter jurisdiction.

25 Plaintiffs have not filed that motion. Judge

1 Stark told them that if they wanted to challenge
2 jurisdiction, they need to file a motion and they have not
3 done that. So the only issue that we're here to discuss
4 today is whether or not their application for protective
5 order is proper and Sandoz strongly believes it is not
6 proper.

7 Plaintiffs' request is contrary to both the
8 letter and the spirit of local Rule 30.2. Local Rule 30.2
9 allows somebody to challenge further deposition testimony to
10 get a protective order under Rule 26 or Rule. Protective
11 orders for those rules are granted to prevent annoyance,
12 embarrassment, oppression. None of that is present here.

13 The only basis for plaintiffs' request is that
14 they think there's no longer subject matter jurisdiction.
15 The only challenge for that is to file a Rule 12 motion, and
16 Rule 12 is not mentioned anywhere in local Rule 30.2 as a
17 basis for terminating a deposition.

18 Plaintiff took it upon themselves for self-help
19 to give themselves a stay of discovery and filed its motion
20 for a protective order on an improper basis knowing full
21 well that Judge Stark told them if they want to get rid of
22 the claim, they have to file a motion to dismiss.

23 Now, all of this gamesmanship by plaintiffs has
24 worked a great prejudice on Sandoz. Sandoz coordinated with
25 MSN and Torrent in an extent to streamline the deposition of

1 Dr. Gozzo.

2 Plaintiff sat on this issue for many weeks as
3 you just heard and then ripped the rug out underneath from
4 defendants just days before the Gozzo deposition, which
5 frustrated preparation for all parties on the Gozzo
6 deposition, and now plaintiffs seek to exacerbate that
7 prejudice by asking this Court to forego local Rule 30.6 and
8 allow them to speak to Dr. Gozzo before Sandoz takes Dr.
9 Gozzo's deposition. And that is wholly improper.

10 Local Rule 30.6 is designed for exactly where --
11 the situation where counsel should not be allowed to talk to
12 their witness about the substance of their testimony based
13 on questions that have already been asked. This notion that
14 each defendant constitutes a separate deposition is a legal
15 fiction that was created by Covington in these letters and
16 has no basis in all of the history of this case up until
17 this particular dispute, and we cited that in our letter
18 brief where both Judge Stark and plaintiffs themselves
19 referred to a deposition of Dr. Myerson and Dr. Gozzo in the
20 singular, and this case has been consolidated for all
21 purposes.

22 So this deposition of Dr. Gozzo is a single
23 deposition and plaintiffs should not be allowed to review
24 that transcript from the MSN and Torrent depositions and
25 then coach Dr. Gozzo what to say for the Sandoz depositions

1 based on what they've already learned.

2 This is no different than if Dr. Gozzo were
3 testifying on the stand at trial. If MSN and Torrent finish
4 their questioning of Dr. Gozzo, I would be shocked if Judge
5 Stark allowed plaintiffs to then talk to Dr. Gozzo about the
6 substance of her testimony before Sandoz questioned Dr.
7 Gozzo. The same should apply to the depositions here.

8 As Your Honor noted, we don't have much time.
9 Trial is set for January of 2021. We need to schedule these
10 depositions of Dr. Gozzo and Dr. Myerson so that we can be
11 trial ready by the time set by Judge Stark.

12 There is no basis for a protective order here.
13 If plaintiffs want to challenge subject matter jurisdiction,
14 Judge stark told them how to do that, and that is filing a
15 Rule 12 motion.

16 THE COURT: Counsel, let me ask you. The way I
17 understood how Dr. Gozzo's deposition or depositions have
18 been proceeding is that they've been completely separate
19 among defendants. You're suggesting something different.
20 Can you straighten me out here?

21 MR. REMUS: I can't speak to how the MSN and
22 Torrent depositions specifically were handled because we
23 were not present at that deposition, so we can't say what
24 was or was not on the transcript. What I can say is that
25 every discussion the parties have had about these

1 depositions refer to the depositions in the singular, a
2 deposition of Dr. Myerson, and just because one defendant
3 finishes their questioning and another begins does not mean
4 that a new deposition has begun.

5 THE COURT: Okay. I understand your position.
6 Anything else you wanted to add?

7 MR. REMUS: No. Thank you, Your Honor.

8 THE COURT: All right. We'll turn it back over
9 to the plaintiff for the last word. Just a minute, please.
10 Go ahead.

11 MS. BHARKHDA: Your Honor, I did want to address
12 the issue of the legal standard for a protective order for
13 absent burden, annoyance, and there is a reason here
14 particularly why going forward with depositions that are not
15 actually going to be at issue in the case totally meets that
16 standard.

17 First of all, Dr. Myerson is scheduled to sit
18 for more than 40 hours of depositions in this case, and so
19 to ask him if Sandoz, if Sandoz matters are not really
20 particularly in this case, to sit for more time is a burden
21 both to the witness and to plaintiffs.

22 Dr. Gozzo, similarly. We would have to take
23 additional time out of the deposition she has already given
24 to do so. And as a general matter, there are 29 different
25 experts in this case. There are at least two to three

1 depositions that happen in a week. Some of these are
2 multi-day accept depositions in this case, so there is a lot
3 happening to add on two depositions here where the actual
4 issues are not in dispute.

5 And the other issue is that right now Dr.
6 Myerson is scheduled to be deposed, I believe it's the
7 second week of November, and so even if plaintiff filed
8 their motion and (inaudible) and was going to dismiss, I
9 think issue is, the question of whether or not it's
10 appropriate for Sandoz to participate in that deposition is
11 still going to be an issue and we don't think it's
12 appropriate or proper.

13 So it's not just a matter of file a motion to
14 dismiss and wait to see what Dr., excuse me, what Judge
15 Stark does with it. I mean, one question is, if we file a
16 motion to dismiss, is Sandoz going to oppose it, because
17 right now we don't have a clear answer on that one way or
18 the other or what the basis for doing so would be, and
19 absent that, this bogeyman of the fact that a formal motion
20 to dismiss hasn't been filed yet I don't think resolves the
21 issue.

22 THE COURT: All right. I appreciate your
23 position and I understand your position. Counsel, I'm ready
24 to rule on this dispute and my ruling is as follows.

25 Plaintiffs' request for a protective order to

1 prevent Sandoz from deposing Dr. Gozzo and Myerson is
2 denied. The Court can issue a protective order for good
3 cause to protect a person or party from annoyance,
4 embarrassment, oppression, or undue burden or excess. The
5 burden of persuasion is on the party seeking the protective
6 order.

7 Here, plaintiff contends that good cause exists
8 because the deposition testimony is not relevant. I have
9 reviewed the letters and attachments. I've reviewed the
10 cited portions of the docket. I have an understanding of
11 what's likely going on here and I'm fully aware that this
12 motion before me is only a little piece of a much larger
13 dispute, but I've only been referred this piece and I'm only
14 going to decide this piece. And in my mind, the operative
15 facts to me in deciding my piece are these.

16 One, Sandoz has a live counterclaim for a
17 declaratory judgment of noninfringement. Not only is it
18 live, it is not currently subject to a motion to dismiss.

19 Two, plaintiff intends to offer the testimony of
20 Dr. Gozzo and Myerson in defense of that counterclaim it has
21 tried.

22 My decision is also informed by the context
23 here, which is that we're talking about a video deposition
24 regarding infringement opinions that have already been set
25 forth in expert reports. The only question is whether

1 Sandoz can depose these experts on those opinions. On those
2 facts, plaintiffs' request is denied.

3 There is also an issue about plaintiffs, whether
4 plaintiffs are currently barred under Delaware local Rule
5 30.6 from conferring with Dr. Gozzo in preparation of her
6 deposition. Essentially, as I understand it, Sandoz seeks
7 to prevent plaintiff from prepping Dr. Gozzo for her
8 deposition.

9 Under the particular circumstances here, I'm
10 unpersuaded by Sandoz's argument. Again, I've read the
11 submissions and I've looked at the relevant portions of the
12 docket and we're not operating in a vacuum here. Chief
13 Judge Stark has already ruled on what depositions can be
14 taken of Dr. Gozzo. I understand that Dr. Gozzo's
15 deposition taken by the other two defendants have been
16 completely separate. There is no common portion of that
17 deposition. However, notwithstanding the fact that
18 plaintiff can prep Dr. Gozzo, Sandoz will be permitted to
19 conduct a short colloquy at the beginning of the deposition.

20 You can ask if plaintiff consulted with Dr.
21 Gozzo prior to the deposition. If that answer is yes, you
22 can ask whether Dr. Gozzo consulted with counsel for
23 plaintiff regarding testimony she has already given. You
24 can't ask what was said. And you can ask about which areas
25 of the testimony already given was the consultation. You

1 can't ask what was said. And you can make a record that
2 this happened.

3 If, for whatever reason, Dr. Gozzo presents
4 diametrically opposed testimony, then you can try to make
5 some hay with Judge Stark at trial, because I understand
6 this is going to be a bench trial. But I actually think
7 this is extremely unlikely to happen in light of the fact
8 that it seems to me this case, or these particular claims
9 won't be tried, number one, and, number two, I think it's
10 unlikely that the plaintiff would present diametrically
11 opposed testimony, but that's not for me to say. You can
12 make this record. I hope that was clear to everyone.

13 Counsel for plaintiff, any questions?

14 MS. BHARKHDA: I don't believe so, Your Honor.

15 THE COURT: Okay. Counsel for Sandoz, any
16 questions?

17 MR. REMUS: No questions, but one request, and
18 that is we would ask that at least temporarily that the
19 court reporter maintain this transcript under seal so that
20 we have an opportunity to review it to see if there's
21 anything confidential. [REDACTED]
22 [REDACTED]
23 [REDACTED], and we would just
24 like the opportunity to review that transcript before it
25 becomes public.

1 THE COURT: That's fine. I understand that
2 we're proceeding under the scheduling order that Judge Stark
3 has entered in this case, and my recollection is that he has
4 a standard provision about how these things should be
5 treated, and if that's the appropriate procedure, then we'll
6 let the transcript be marked confidential and you should
7 proceed in accordance with what other followup procedures
8 are set forth in the scheduling order.

9 Anything else, counsel?

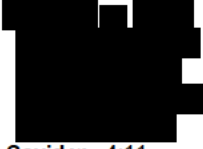
10 MR. REMUS: No. Thank you, Your Honor.

11 THE COURT: All right. Thank you to all of you.
12 I hope everyone is safe and well, and we'll be adjourned.

13 (Counsel respond, "Thank you, Your Honor.")

14 (Telephone conference concluded at 2:31 p.m.)

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